

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

WILEY EDU, LLC,

Plaintiff,

Civ. Action No. 2:23-cv-00550

v.

WEST VIRGINIA STATE UNIVERSITY,

Defendant.

COMPLAINT

Plaintiff Wiley edu, LLC, (“Plaintiff” or “Wiley”) which acquired The Learning House, Inc. (“The Learning House”) in 2018, for its complaint against Defendant West Virginia State University (the “University”) alleges as follows:

NATURE OF THE CASE

1. This action arises from Defendant University’s refusal to pay amounts owed pursuant to a contract for services. Specifically, the University has breached the parties’ agreement by refusing to pay Wiley its share of tuition revenue during the two years following the expiration of the agreement.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendant are citizens of different states and the amount in controversy, excluding interest and costs, exceeds \$75,000.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) because Defendant is located in this district.

4. This Court has personal jurisdiction over the parties because, *inter alia*, Defendant is located in the Southern District of West Virginia, conducts substantial business in this jurisdiction, and has extensive, systematic and continuous contacts with this state.

THE PARTIES

5. Wiley is a limited liability company organized under the laws of Delaware with its principal place of business at 111 River St., Hoboken, New Jersey 07030. Wiley acquired Learning House in 2018.

6. Upon information and belief, the University is a higher education institution located at 5000 Fairlawn Drive, Institute, West Virginia 25112.

FACTS

7. Wiley provides marketing, recruiting, student retention and support, course development, and other program management services to support higher education institutions in their operation of online degree programs. This bundle of services is generally referred to in the education technology industry as online program management or “OPM” services.

8. The Learning House and the University entered into a Master Services Agreement with an effective date of January 1, 2016 (the “Agreement”). A copy of the Agreement is attached hereto as Exhibit A.

9. Wiley acquired The Learning House on November 1, 2018 and assumed the contractual relationship with the University.

10. Under the Agreement, Wiley was responsible for developing the curriculum, reviewing applications for admission and rendering admissions decisions, recruiting and compensating course instructors, maintaining academic records, and course development, among other things.

11. Under the Agreement, Wiley was responsible for providing a full suite of services, including:

- a. Marketing
- b. Recruitment of students
- c. Student support services, e.g., 24/7 technical support, new student orientation, etc.
- d. Course Management
- e. Program Development Services
- f. Student Retention Services.

12. Pursuant to Sec. III of the Agreement, the only compensation Wiley received for these services was a share of the tuition revenue for the students who enrolled in the University's online degree programs (the "Revenue Share").

13. Wiley invested money in marketing the University's online degree programs and recruiting prospective students to apply for admission. It only received a return on that investment when its marketing and recruiting efforts successfully resulted in students gaining admission to the University and thereafter enrolling in courses.

14. Sec. III.B of the Agreement states that the University's obligation to pay the Revenue Share to Wiley for courses taken by students enrolled at the time of the expiration of the Agreement continues "for the duration of each student's enrollment with [the University], regardless of the expiration or termination of this Agreement, not to exceed six (6) years from the expiration or termination of this agreement." Sec. III.B ensured that Wiley would be able to recover its investment in marketing and recruiting students who enrolled just prior to the expiration of the Agreement.

15. On December 2, 2020, Wiley and the University entered into a settlement agreement to resolve Wiley's assertion that the University materially breached the Agreement by failing to pay \$834,679.30 in Revenue Share (the "Settlement Agreement", attached hereto as Exhibit B). The Settlement Agreement was clear in Sec. 5 that it did "not serve to amend the terms of the Agreement except with respect to payment of the overdue amounts as set forth [t]herein."

16. The Agreement expired on December 30, 2020.

17. The University failed to pay an invoice issued by Wiley on July 27, 2021 that was due by August 31, 2021 for the Spring and Summer 2021 terms. The University cut off Wiley's access to student enrollment data that would allow it to continue generating invoices.

18. Wiley sent a notice of breach on April 11, 2022. The University responded on April 29, 2022, arguing that it considered "its relationship with Wiley to be over" because it fulfilled its payment obligations to Wiley pursuant to the Settlement Agreement. Wiley responded on May 3, 2022, reminding the University that its obligations to pay the Revenue Share survived the expiration of the Agreement, and that the Settlement Agreement did not otherwise release the University from these obligations. The University ignored Wiley's repeated requests for a substantive response for nearly six months.

19. On January 24, 2023, the University provided student enrollment records for the Spring 2021 term through the Fall 2022 term. Based on these records, Wiley sent six invoices to the University (one for each of the terms during this timeframe) for \$686,588 on January 25, 2023 (the "Post-Term Invoices"). This amount excluded certain categories of students where the University was unsure of the amount of tuition revenue received. Wiley issued the invoices without waiving its right to demand any additional amounts owed for these students. To date, the University has refused to pay any of the Post-Term Invoices.

20. In addition to the Post-Term Invoices, the University continues to owe Wiley the Revenue Share for any further enrollments from students enrolled in Wiley courses at the time of expiration of the Agreement, pursuant to Sec. III.B of the Agreement.

COUNT I

(Breach of Contract)

21. Wiley repeats and realleges the foregoing paragraphs of the Complaint as if fully set forth herein.

22. Wiley, as successor to The Learning House, and the University entered into a binding contract, specifically, the Agreement, on or around January 1, 2016.

23. Wiley has at all times performed all of the obligations it undertook in the Agreement. At no point prior to the expiration of the Agreement did the University notify Wiley that it had breached any of its material obligations thereunder.

24. The University has materially breached the Agreement by failing to pay the Revenue Share owed to Wiley, pursuant to Sec. III.B of the Agreement.

25. Wiley noticed the University's breaches in a letter dated April 11, 2022.

26. As a result of the University's breaches of the Agreement, Wiley has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Wiley respectfully requests that this Court enter the following relief in its favor:

- A. An order awarding Wiley its damages;
- B. Provide for any other and further relief that is just and proper.

Dated: August 15, 2023

PLAINTIFF,

By Counsel

/s/ Michael B. Hissam

Michael B. Hissam (WVSB #11526)

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